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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION TWO

THE PEOPLE,
Plaintiff and Respondent,
v.
JOELLE BURGESS,
Defendant and Appellant

A110051

(Mendocino County
Super. Ct. No. 05-63892)

Appellant's counsel filed an opening brief in which he raises no specific issues and asks this court for an independent review of the record as required by *People v. Wende* (1979) 25 Cal.3d 436. Finding no arguable issues, we affirm the trial court's sentence.

BACKGROUND

On February 23, 2005, a complaint was filed charging appellant with one count of "failure to appear on own recognizance" on December 20, 2004, in violation of Penal Code section 1320, subdivision (b), after having been charged with the commission of a burglary in the first degree. On March 4, 2005,¹ appellant was advised and waived her constitutional rights and pled guilty to the charge with the understanding that she would be sentenced to the low prison term of 16 months. Appellant was referred to the probation department for a report and recommendation and ordered to reappear on March 25 for sentencing.

At the sentencing hearing, appellant made a *Marsden* motion pursuant to *People v. Marsden* (1970) 2 Cal.3d 118. The courtroom was cleared and the motion was heard and denied. During the hearing on her *Marsden* motion, appellant complained that her rights were violated because she had not yet been interviewed by the probation office and that she was expecting to be sentenced within the 20 court days. The court conceded that it was the court's failure to notify probation that caused the delay and attempted to expedite the matter pursuant to Penal Code section 1203, subdivision (c). The probation officer present at the hearing, however, informed the court that a full report would be necessary and would take at least two weeks to complete. Judgment and sentencing were then continued to April 8, 2005. Appellant was ordered to be present.

On April 8, the court sentenced appellant to the lower prison term of 16 months for violation of Penal Code section 1320, subdivision (b), in accordance with the plea agreement. A \$200 restitution fine was imposed and an additional \$200 restitution fine was also imposed but stayed unless parole was revoked. Credit for time served of 53 days, plus 26 good conduct days, for a total of 79 days, was awarded. On May 5, appellant filed a timely notice of appeal alleging that the failure to sentence appellant within 20 court days constitutes sentencing error. Appellant did not seek or obtain a certificate of probable cause to appeal.

DISCUSSION

The only issue raised below was sentencing error. We have carefully reviewed the record and discern no error in appellant's sentencing. Penal Code section 1191 provides, in relevant part, that "[i]n a felony case, after a plea . . . the court shall appoint a time for pronouncing judgment, which shall be within 20 judicial days after the . . . plea of guilty, during which time the court shall refer the case to the probation officer for a report if eligible for probation and pursuant to Section 1203. However, the court . . . may further extend the time until the probation officer's report is received and until any proceedings for granting or denying probation have been disposed of." Here, the sentencing hearing

¹ All further dates refer to the year 2005.

was properly continued because the probation officer's report and recommendation were not available at the time of sentencing. Moreover, the pronouncement of judgment beyond this statutory period is not reversible error unless the defendant is prejudiced. (See e.g., *People v. Zuvela* (1923) 191 Cal. 223, 224; *People v. Powell* (1927) 83 Cal.App. 62, 64; *People v. Pollock* (1939) 31 Cal.App.2d 747, 761; *People v. Novel* (1953) 118 Cal.App.2d 534, 538; *People v. Cheffen* (1969) 2 Cal.App.3d 638, 642 [failure to comply with Pen. Code, § 1191 requires reversal only if the delay results in a miscarriage of justice].) Nothing in the record, however, indicates any prejudice to the appellant as a result of the delay in sentencing.

There are no other arguable issues which require briefing.

DISPOSITION

The judgment is affirmed.

Lambden, J.

We concur:

Kline, P.J.

Richman, J.